**International Union of Bricklayers & Allied Craftworkers, AFL–CIO *and* W. R. Weis Company, Inc. and Bridge, Structural & Reinforcing Iron Workers, Local 1, AFL–CIO and Iron Workers Architectural & Ornamental Union, Local 63, AFL–CIO.** Case 13–CD–579

October 1, 2001

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE AND WALSH

The charge in this Section 10(k) proceeding was filed on January 4, 2000, by W. R. Weis Company, Inc. (the Employer), alleging that the Respondent, International Union of Bricklayers and Allied Craftworkers, AFL–CIO (Bricklayers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to continue to assign certain work to employees it represents rather than to employees represented by Iron Workers Architectural and Ornamental Union, Local 63, AFL–CIO (Local 63), and Bridge, Structural and Reinforcing Iron Workers, Local 1, AFL–CIO (Local 1). The hearing was held on January 19 and 28, 2000, before Hearing Officer Kevin M. McCormick. The Employer, Bricklayers, and Local 1 each filed posthearing briefs.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

## I. JURISDICTION

The Employer, a corporation, engaged in the installation of stone on buildings, is located in Chicago, Illinois. Within the calendar year ending in January 2000, a representative period, it purchased and received at Illinois locations goods and materials valued in excess of $50,000 directly from points outside the State of Illinois. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipulated, and we find, that Bricklayers, Local 63, and Local 1, are labor organizations within the meaning of Section 2(5) of the Act.

[1] Local 63 was neither present at the hearing nor filed a posthearing brief.

## II. THE DISPUTE

### *A. Background and Facts of Dispute*

In September 1999,[2] general contractor, Morse-Diesel International, engaged the Employer as a subcontractor responsible for the reinstallation of the exterior historic limestone on a high-rise commercial building located at 520 North Michigan Avenue, Chicago, Illinois. The stonework installation involved the reinstallation of large pieces of historic limestone using a steel support system to attach the stone to the building's structural members, i.e., the steel columns and concrete floors.

On about December 9, the Employer received notice from the Joint Conference Board of the Construction Employer's Association and the Chicago and Cook County Building and Construction Trades Council (Joint Conference Board) that Local 63 had filed a claim to certain work being performed by the Employer at the project. Specifically, Local 1 and Local 63 claimed the installation of relief angles to support stone and the installation of multipurpose supports. This work had been assigned by the Employer to its employees represented by the Bricklayers. The Employer does not employ iron workers.

On December 23, the Employer received a letter from the Joint Conference Board advising it that the Joint Conference Board had awarded the work in dispute to Local 1 and Local 63. Following receipt of this letter, the Employer did not change the work assignment.

On December 30, the Employer received a letter from the Bricklayers acknowledging receipt of the Joint Conference Board decision. Ken P. Lambert, executive vice president of the Bricklayers, advised the Employer that the Union was prepared to picket, handbill, demonstrate, and apply other appropriate means of pressure if the employees represented by the Bricklayers were replaced by employees represented by the Iron Workers[3] to perform the work in dispute on the project.

### *B. Work in Dispute*

As specified in the original notice of hearing, the work in dispute concerns the unloading, handling, stockpiling, hoisting and installation of relief angles to support stone, and the unloading, handling, stockpiling, hoisting and installation of multipurpose supports on the jobsite at 520 North Michigan Avenue, in Chicago, Illinois.

### *C. Contentions of the Parties*

The Employer and Bricklayers contend that there is reasonable cause to believe that Bricklayers violated Section 8(b)(4)(D) of the Act; that no voluntary means exists for

[2] All dates are in 1999 unless otherwise indicated.

[3] Hereinafter, references to the Iron Workers include both Local 1 and Local 63.

adjustment of the jurisdictional dispute; and that the work in dispute should be awarded to employees represented by Bricklayers based on the factors of its collective-bargaining agreement with the Employer, the Employer's preference and past practice, area and industry practice, relative skills, and economy and efficiency of operations.

Local 1 contends that the notice of hearing should be quashed, arguing that: (1) the Bricklayers' threats are a sham to invoke the Board's authority and obtain a determination favoring the current assignment of the disputed work to employees represented by Bricklayers; (2) there existed a method for voluntary adjustment of the jurisdictional dispute binding on all the parties; and (3) the Regional Director's failure to promptly and properly provide notice to one of the actual parties claiming the disputed work, Local 63, divests the Board of jurisdiction to finally adjudicate this dispute. Local 1 alternatively contends that the disputed work should be awarded to employees it represents based on the factors of efficiency and economy of operations, the skills and work involved, the area and industry practice, the agreements between Iron Workers and Bricklayers, and the awards of arbitrators and joint boards, including the Joint Conference Board.

Although afforded notice and opportunity to appear at the hearing, as noted above, Local 63 was neither present at the hearing nor filed a posthearing brief. Consequently, Local 63 has made no contentions before the Board with respect to the work in dispute.[4]

*D. Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k), it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for voluntary adjustment of the dispute.

Around December 9, Local 1 claimed the disputed work at 520 North Michigan Avenue, which had originally been assigned by the Employer to its employees who are represented by Bricklayers. The Joint Conference Board found that the disputed work should be awarded both to Local 1 and Local 63, and submitted a letter to the Employer informing it of this decision on or about December 23, 1999. On December 30, the executive vice president of Bricklayers threatened to picket and exert other economic pressure at the Employer's jobsite unless employees represented by Bricklayers were allowed to continue to perform the disputed work.

Local 1 contends that by virtue of the Employer's "Warranty and Acceptance" with the Laborers, the Employer is bound to the Laborer's District Council's Multiemployer Agreement, and that, pursuant to that agreement, the Employer is bound to the Standard Agreement and the Joint Conference Board procedure. Article XVII, paragraph 4 of the Laborer's District Council Agreement states:

> The Standard Agreement formulated by the Joint Conference Board of the Construction Employers Association and the Chicago and Cook County Building Trades Council, as amended and readopted, shall be and hereby is adopted as a part of this Agreement *for the Builders' Association of Greater Chicago and its members only*, as fully and completely as if incorporated herein, except as to any provisions of said Standard Agreement which may override or be in conflict with any of the Articles or provisions of the Agreement. [Emphasis added.]

It is undisputed that the Employer is not, and has never been, a member of the Builders' Association of Greater Chicago. Further, the "Warranty and Acceptance" between the Employer and the Laborers Union does not discuss the Joint Conference Board or its authority to resolve jurisdictional disputes. Therefore, the Laborer's contract cannot bind the Employer to the Joint Conference Board procedure.[5]

The Bricklayers advised the Employer in writing that it expected the Employer to abide by the terms of its agreement with the Bricklayers and to continue assigning the disputed work to the employees it represents. The Bricklayers threatened that it was prepared to picket, handbill, demonstrate, and apply other appropriate means of pressure if the employees it represents were replaced with ironworkers.

Local 1 contends that the Bricklayers' threats were shams. As detailed above, however, the statements made in writing by a representative of the Bricklayers clearly constitute threats of economic action, and the Employer's sales manager, William R. Weis, testified that after receiv-

[4] We reject Local 1's claim concerning the alleged insufficiency of service of the charge and notice of hearing on Local 63. Local 1 has failed to demonstrate any prejudice to *Local 1* by the asserted insufficiency of service on Local 63. In addition, Local 63 has failed to allege any insufficiency of service, and the evidence indicates that the Region served Local 63 with the charge and notice of hearing. The 10(k) hearings are nonadversary in character and are designed solely to assist the Board in making the proper award. The failure of a party to participate in the hearing does not operate to stay the proceeding, or preclude the Board from making a finding on the record. *Broadcast Employees NABET Local 16 (American Broadcasting Co.),* 207 NLRB 880, 882 fn. 4 (1973); cf. *Bricklayers (Sesco, Inc.),* 303 NLRB 401, 402 (1991).

[5] *Operating Engineers Local 150 (Interior Development),* 308 NLRB 1005 (1992). Since neither the Laborer's District Council Agreement nor the "Warranty and Acceptance" binds the Employer to the Joint Conference Board procedure, we find it unnecessary to determine whether the Employer's signing of the "Warranty and Acceptance" actually bound it to the Laborers' District Council Agreement.

ing the letter the Employer filed a charge with the Board. Apart from its assertions, Local 1 has brought forth no evidence establishing that the Bricklayers' threats were not genuine or were made in collusion with the Employer. See *Plumbers Local 562 (C & R Heating & Service Co.),* 328 NLRB 1235, 1235–1236 (1999).

Based on the foregoing, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we deny Local 1's Motion to Quash the Notice of Hearing and find that the dispute is properly before the Board for determination.

*E. Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting),* 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction),* 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Collective-bargaining agreements

The Employer and Bricklayers have a collective-bargaining agreement. Article II of this agreement is entitled "Scope, Work Assignments, Manpower, Training." It refers specifically, inter alia, to work assignments involving the work in dispute. The Employer does not have a collective-bargaining agreement with the Local 1 or Local 63. We find that this factor favors an award to employees represented by Bricklayers.

2. Company preference and past practice

The Employer prefers that the work in dispute be performed by employees represented by Bricklayers. The Employer has consistently, over its 10-year history, assigned exterior stone work, including the steel support system, to employees represented by Bricklayers. We find that this factor favors an award to employees represented by Bricklayers.

3. Area and industry practice

Witnesses for the Employer and Bricklayers testified that the practice of employers in the Chicago area and elsewhere has been to assign the disputed work to employees represented by Bricklayers. The Employer's sales manager, William R. Weis, testified that for the past 20 years it has been the practice in Chicago and in other areas throughout the country that the disputed work be performed by employees represented by Bricklayers. In addition, business records retained by a local affiliate of Bricklayers described the construction of a 15-story building in Chicago which used metal-frame support systems for the installation of stone panels and employed 25 employees represented by Bricklayers. Other exhibits introduced by Bricklayers are letters from contractors from three Pennsylvania cities explaining that employees represented by Bricklayers are used exclusively to install support systems for masonry projects. Letters from contractors from various states described the general practice of assigning to employees represented by Bricklayers the welding and other installation work including unloading, hoisting, and setting in connection with metal support systems for various type of masonry products.

Local 1 contends that, based on the Chicago area and industrywide practice, the disputed work should be awarded to the employees that Union represents. Kevin Johnson, vice president and general superintendent for Morse-Diesel, testified that, based on his experience with similar construction projects throughout the United States, ironworkers should install the steel support system. Johnson testified that since 1990 he had overseen about 20 total jobs for Morse-Diesel and that he has supervised about 12 jobs in Cook County that involved steel with limestone or granite attached to it. Johnson testified that when the disputed work involves affixing the "red" iron to the steel beams which form the structural members of the building itself, the purpose of the "red" iron becomes structural in nature because it now supports other materials in addition to the stone.

Michael Hebda, financial secretary/treasurer of Local 1, testified that based on his 25 five years of experience as a member of that Union in the Chicago area and throughout the United States, the installation of the "red" iron or "red" steel at issue here was the work of an ironworker. Hebda agreed that the purpose of the steel support system was multiple support. Albert Bass, the apprenticeship coordinator for Local 1, testified that the "red" ironwork would be considered ironworker's work in the Chicago area. Patrick Clark, a contractor trained as an iron worker who was also the president of the Associated Steel Erectors of Chicago, testified that the disputed work would typically be performed by ironworkers. In addition, 34 Chicago area contractors who were surveyed all stated in their correspondence to Local 1 that the disputed work would typically be assigned to ironworkers.

Based on the above we find that this factor favors an award to neither the employees represented by Iron Workers nor those represented by Bricklayers.

4. Relative skills

Both the employees represented by the Bricklayers and the employees represented by the Iron Workers have the necessary skills to perform the work. This factor favors neither group of employees.

5. Efficiency and economy of operation

William R. Weis, sales manager for the Employer, testified that employees represented by Bricklayers are the most efficient at installing the stone system. Weis testified that the bricklayers performed phases of the work that are not in dispute and that if they did not perform the work in dispute as well the process would be less efficient and more costly. Both trades would have to work off one scaffolding and when one trade was working, the other would be idle or inefficient. We find that this factor favors an award of the work in dispute to employees represented by Bricklayers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Bricklayers are entitled to perform the work in dispute. We reach this conclusion by relying on the factors of collective-bargaining agreements, employer preference and past practice, and efficiency and economy of operations. In making this determination, we are awarding the work to employees represented by Bricklayers not to that Union or its members.

Scope of Award

The Employer contends that, based on the actions of the Iron Workers and the Board's decision in *Bricklayers (Sesco Inc.),* 303 NLRB 401 (1991), a broad order is necessary to avoid similar jurisdictional disputes in the future.

The Board customarily declines to grant an area wide award in cases, such as the instant case, in which the charged party represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. See, e.g., *Laborers Local 243 (A. Amorello & Sons),* 314 NLRB 501, 503 (1994); *Laborers (Paul H. Schwendener),* 304 NLRB 623, 625–626 (1991).[6] Accordingly, we shall limit the present determination to the particular controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of W. R. Weis Company, Inc., represented by International Union of Bricklayers & Allied Craftsworkers, AFL–CIO, are entitled to perform the unloading, handling, stockpiling, hoisting and installation of relief angles to support stone, and the unloading, handling, stockpiling, hoisting, and installation of multipurpose supports on the jobsite at 520 North Michigan Avenue, Chicago, Illinois.

[6] For the Board to issue a broad area wide award, there must be evidence that the disputed work has been a continuing source of controversy in the relevant geographic area and that similar disputes are likely to recur. There must also be evidence which demonstrates that the *charged party* has a proclivity to engage in unlawful conduct to obtain work similar to the disputed work. *Electrical Workers Local 211 (Sammons Communications),* 287 NLRB 930, 934 (1987). In this case, employees represented by the Bricklayers have been assigned the work from the outset, and their conduct was aimed at retaining the work in the face of Local 1's demands.